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Application No.: 10/751,362

Inventor(s): Radhakrishnan J. Nair, et al.

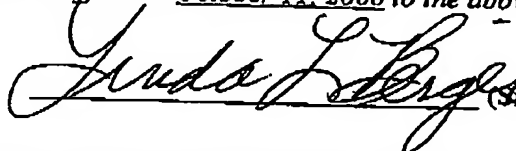
Filed: January 5, 2004

Docket No.: AA611

Confirmation No.: 2195

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- 1) Amended Appeal Brief - 12 Pages
- 2)
- 3)

Number of Pages Including this Page: 13 Pages

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/751,362
Inventor(s) : Nair, Radhakrishnan J.
Filed : January 5, 2004
Art Unit : 3761
Examiner : Ginger T. Chapman
Docket No. : AA611
Confirmation No. : 2195
Customer No. : 27752
Title : Absorbent Product Containing Absorbent Articles Each
Having Different Graphic

AMENDED APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

An Appeal Brief was filed on August 28, 2006 pursuant to the appeal from the U.S. Patent and Trademark Office final rejection of claims in the above-identified application in an Office Action mailed on April 4, 2006. A Notice of Appeal was filed on July 5, 2006.

The Office mailed a Notification of Non-Compliant Appeal Brief on September 11, 2006. The Notification cites two non-compliance issues relating to the originally filed Appeal Brief.

First, the Notification asserts the originally filed Appeal Brief does not contain the items required under 37 C.F.R. § 41.37(c). Particularly, the Notification states that the Appeal Brief does not contain a concise statement of each ground of rejection presented for review pursuant to 37 C.F.R. § 41.37(c)(1)(vi). In response, the Appeal Brief has been amended to include the statutes and references according to the rejections per the Office Action.

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Second, the Notification asserts the Appeal Brief does not contain a correct copy of the appealed claims as an appendix thereto pursuant to 37 C.F.R. § 41.37(c) (1) (viii). In response, the Claims Appendix has been amended to include only the claims involved in the appeal. Claims that are allowed, cancelled, or withdrawn have been removed from the Claims Appendix.

The Notification requires the Applicant to file an appropriate correction within one month or thirty days from the mailing date of the Notification, whichever is longer. As such, this Amended Appeal Brief is filed in response to the Notification mailed on September 11, 2006, and is timely up to and including October 11, 2006. Authorization is hereby given to charge any additional fees which may be required, or credit any overpayment, to Deposit Account Number 16-2480 in the name of The Procter & Gamble Company:

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1, 2, 4, 10, and 11 stand rejected. Claims 3 and 5-9 have been withdrawn. Claims 12-21 have been cancelled.

Claims 1, 2, 4, 10, and 11 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed subsequent to the final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to an absorbent product comprising a package and at least n absorbent articles contained in the package, wherein n is greater than 10. Page 5,

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line 32 – page 6, line 1. Each of the absorbent articles has a body contacting surface and a garment contacting surface opposing the body contacting surface. Page 6, lines 1-2. Each of the absorbent articles comprises a component material disposed between the body contacting surface and the garment contacting surface. Page 6, lines 2-6. The component material has a printed graphic which is seen through either the body contacting surface or the garment contacting surface. Page 6, lines 10-12. The printed graphic of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles. Page 6, lines 17-28. Furthermore, all of the printed graphics of the n absorbent articles have a predetermined association. Page 8, line 10-14.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- I. Claims 1, 2, 4, 10, and 11 stand finally rejected under 35 USC § 102(e) as being anticipated by U.S. Patent No. 6,558,499 to Pargass *et al.* (hereinafter referred to as “Pargass”).
- II. Claim 4 stands finally rejected under 35 U.S.C. §103(a) as being unpatentable over Pargass in view of International Publication Number WO 00/13632 to Stavrulov (hereinafter referred to as “Stavrulov”).

ARGUMENTS

- I. Rejection of Claims 1, 2, 4, 10, and 11 under 35 USC § 102(e) over Pargass.
 - A. Claims 1, 2, 4, 10, and 11 - In support of this rejection, the Office points to various structures presented in the product of Pargass. Specifically, the Office states:

Pargass *et al* disclose an absorbent product (10) comprising a package (col. 5, 1. 4) and at least n absorbent articles contained in the package, wherein n is greater than 10 (col. 5, 1. 5), each of the absorbent articles having a body contacting surface (14) and a garment contacting surface (22) opposing the body contacting surface, each of the absorbent articles comprising: a component material (26) disposed between the body contacting surface (14) and the garment contacting surface (17), the component material (26) having a printed graphic (21) which is seen through either the body contacting surface or the garment contacting

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surface (fig. 1); wherein the printed graphic (21) of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles and all of the printed graphics (21) of the n absorbent articles have a predetermined association (col. 15, II 44-52).

However, Appellant asserts that Pargass fails to teach each and every limitation present in the recited claims.

Claim 1 (and all dependent claims thereof) includes the limitation of "the printed graphic of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles." The claim is directed to absorbent articles within a package wherein each article has a printed graphic different from printed graphics on remaining articles. The passage cited by the Office in support of the rejection (*i.e.*, col. 15, lines 44-52) states, "The term 'variety pack' refers to a set of individual absorbent articles continuously manufactured in-line, wherein each absorbent article includes at least one graphic thereon, and wherein at least one graphic included on each individual absorbent article differs from at least one graphic on adjacent absorbent articles in the manufacturing line." This passage does not teach or suggest Appellant's limitation where each article has a printed graphic different from the printed graphic on the remaining articles. Pargass merely teaches that, on the manufacturing line, adjacent absorbent articles have different graphics.

Furthermore, Pargass discloses that the variety pack will include repeating articles. See Col. 5, lines 2-6 ("In other words, a variety pack of absorbent articles is provided such that, for example, each package of absorbent articles contains anywhere from 3 to 15, and preferably from 5 to 10, distinct repeating graphics in each package.") and col. 15, lines 62-64 ("As such, the 'set' of absorbent articles in the variety pack will include four repeating articles."). These passages further strengthen Appellant's assertion that Pargass does not teach Appellant's limitation of "the printed graphic of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles."

Claim 1 (and all dependent claims thereof) further recites the limitation of "wherein all of the printed graphics of the n absorbent articles have a predetermined association." In reference to this limitation, the Office cites column 15, lines 44-52 of

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Pargass (*i.e.*, "The term 'variety pack' refers to a set of individual absorbent articles continuously manufactured in-line, wherein each absorbent article includes at least one graphic thereon, and wherein at least one graphic included on each individual absorbent article differs from at least one graphic on adjacent absorbent articles in the manufacturing line"). It is unclear how the passage from Pargass teaches or suggests Appellant's limitation of printed graphics having "a predetermined association."

B. Claim 2 – In support of the rejection, the Office states, "Pargass et al disclose the predetermined association includes a predetermined order, and the n absorbent articles are stacked in the package in accordance with the predetermined order (col. 5, ll. 2-6)." The passage at column 5, lines 2-6 of Pargass states, "In other words, a variety pack of absorbent articles is provided such that, for example, each package of absorbent articles contains anywhere from 3 to 15, and preferably from 5 to 10, distinct *repeating graphics* in each package." (Emphasis added). The Office's rejection of Claim 2 is based on a passage clearly stating that the package has repeating graphics. However, Claims 2, dependent from and incorporating all of the limitations of Claim 1, recites that "the printed graphic of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles." The passage cited by the Office presents a contradiction. By using the passage of Pargass as support for the predetermined order, the articles of Pargass necessarily have repeating graphics which is contrary to the limitation that the printed graphic on each of the absorbent articles is different from the graphic on the remaining articles. Therefore, Pargass cannot teach each and every limitation of Claim 2.

C. Claim 4 - The Office states, "Pargass et al disclose the predetermined order is an order of usage instruction (col. 6, line 59)." Pargass discloses that written instructions are an example of a graphic. Col. 6, lines 49-59. While Pargass discloses that the absorbent article can have written instructions as a graphic, there is nothing teaching or suggesting that the written instruction is provided in a predetermined order. As discussed above in regard to Claim 2, the only order found in Pargass is that of a repeating graphic, which necessarily prevents Pargass from teaching each and every

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limitation of Claim 1. Appellant asserts that Pargass fails to teach that "the predetermined order is selected from the group consisting of an order illustrating story, an order for daily activity, an order for educational training, a sequential indication means, an order of usage instruction, an order illustrating child care tips, an order of sales promotion, and combinations thereof."

II. Rejection of Claim 4 under 35 U.S.C. §103(a) over Pargass in view of Stavulov.

The Office concedes, "Pargass et al. disclose the predetermined order includes an order of usage instructions but does not expressly disclose an order illustrating story, an order for daily activity, an order for educational training, a sequential indication means, an order of usage instruction, an order illustrating child care tips, and an order of sales promotion." The Office continues:

Stavulov, at page 3, lines 15- 22 expresses the desire and clear motivation to increase the attractiveness of single use hygienic products such as diapers by covering the surface of the product with images in the form of texts and pictures of educational, entertaining, instructive or other nature attractive to a consumer thereby increasing consumer demand for the product. Stavulov teaches an order illustrating story, (p. 7, l. 24) an order for daily activity (p. 7, l. 20, l. 23), an order for educational training (p. 7, l. 18), a sequential indication means (p. 8, ll. 19-20), an order of usage instruction (p. 1, l. 20), an order illustrating child care tips (p. 7, ll. 19-20), and an order of sales promotion (p. 12, l. 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the orders as taught by Stavulov in the predetermined order of Pargass et al since Stavulov states at page 11, lines 11-16 that this attracts consumer attention and stimulates the purchase of the product by the consumer.

Appellant traverses the rejection on grounds that (i) the proposed modification fails to teach each and every limitation present in the claim and (ii) the motivation provided by the Office does not yield the claimed invention.

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First, Appellant asserts that the hypothetical combination proposed by the Office fails to teach or suggest each and every limitation present. As discussed above, Pargass is directed, in part, to a variety pack including absorbent articles wherein each absorbent article includes at least one graphic thereon, and wherein at least one graphic included on each individual absorbent article differs from at least one graphic on adjacent absorbent articles. Col. 15, lines 44-52. Stavrulov relates to envelopes used to wrap hygienic products such as diapers and sanitary. *See* Abstract. The envelopes bear images in the form of text and/or pictures which are not identical. Page 6, lines 10-22. The envelope wrapped hygienic products are incorporated into a "minimal commodity unit." Page 1, lines 11-12. Appellant has found no teaching within Stavrulov about placing images on the hygienic article (e.g., diaper) itself. As a result, the hypothetical combination of Pargass and Stavrulov appears to yield a set of absorbent articles as described by Pargass individually wrapped by the envelopes as described by Stavrulov, wherein each absorbent article is wrapped by an envelope bearing a unique image.

This hypothetical combination of Pargass and Stavrulov fails to teach the limitations of the present claim. Specifically, the combination does not yield an absorbent product comprising a package and at least *n* absorbent articles contained within the package, wherein the printed graphic of each of the *n* absorbent articles is different from the graphic of each of the remaining absorbent articles and wherein all of the printed graphics of the *n* absorbent articles have a predetermined association. The Office has taught a set of absorbent articles (per Pargass) that have repeating graphics where each article is individually wrapped by an envelope having differing graphics (per Stavrulov). This hypothetical combination fails to address the deficiency of Pargass as presented by the Office (e.g., "Pargass et al. disclose the predetermined order includes an order of usage instructions but does not expressly disclose an order illustrating story, an order for daily activity, an order for educational training, a sequential indication means, an order of usage instruction, an order illustrating child care tips, and an order of sales promotion").

Second, the Office states that motivation to combine the references is provided by Stavrulov at page 11, lines 11-16 ("Implementation of the present invention should raise competitiveness of the single use hygienic products, which are made according to the invention, thanks to the variety in appearance of products making individual commodity

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unit, each of which is a source of the accessible, useful, interesting, various and periodically updated information. There will be stimulus for purchase of such products, instead of products without such information.”). The motivation provided by Stavrulov is directed to the appearance of envelopes wrapping hygienic products and not to the appearance of the hygienic products themselves. The Office has provided no motivation for why the combination of Stavrulov and Pargass results in Appellant’s claimed invention. The combination necessarily involves “non-identical images . . . placed on surfaces of envelopes.” *Stavrulov*, page 3, lines 24.

In light of the discussion presented above, a *prima facie* case of obviousness has not been made.

III. Reliance on *Ngai* to generally support rejections of Claims 1, 2, 3, 4, 10, and 11.

In response to Appellant’s January 23 arguments, the Office, in its Office Action mailed on April 4, 2006, cited *In re Ngai*, 367 F.3d 1336, 70 U.S.P.Q.2D 1862 (Fed. Cir. 2004). While the Office has not presented an explanation of the relevance of *Ngai* to the present application, to the rejection(s) *Ngai* supports, or to the claim(s) which *Ngai* pertains, it appears that *Ngai* is generally being used by the Office to support its rejections of Claims 1, 2, 4, 10, and 11. However, Appellant asserts that the Office’s reliance on *Ngai* is misplaced.

The Office states, “Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art.” The Office ignores an important qualifier, “not functionally related.” To determine functional relation, the *Ngai* court discussed a prior case, *In re Gulack*, 703 F.2d 1381 (Fed. Cir. 1983). In discussing *Gulack*, the *Ngai* court analyzes the interrelation between the printed matter and the product to produce a new, useful product. *Ngai* at 1339. In the present application, the printed matter (*i.e.*, a printed graphic) and the substrate (*i.e.*, the absorbent article via the component material) are functionally related. The printed graphic does not achieve its consumer benefit purpose without the absorbent articles. The absorbent product comprising absorbent articles does not achieve its “association” benefit

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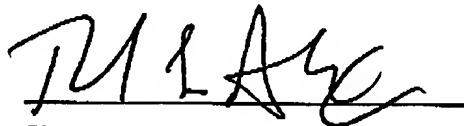
without the printed graphic. Appellant asserts that the present application more closely resembles *Gulak* such that there is a functional relation between the product and the printed matter. As a result, Appellant asserts that the Office's reliance on *Ngai* is in error.

SUMMARY

In view of the discussion and arguments presented above, it is respectfully submitted that Claims 1, 2, 4, 10, and 11 have not been properly rejected under 35 U.S.C. § 102(e) or under 35 U.S.C. § 103(a). Appellant respectfully requests the Board of Patent Appeals and Interferences to reverse the rejection of Claims 1, 2, 4, 10, and 11 and to remand the application with instructions that these claims be allowed over the cited documents.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



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Date: October 11, 2006

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CLAIMS APPENDIX

1. An absorbent product comprising a package and at least n absorbent articles contained in the package, wherein n is greater than 10, each of the absorbent articles having a body contacting surface and a garment contacting surface opposing the body contacting surface, each of the absorbent articles comprising:

a component material disposed between the body contacting surface and the garment contacting surface, the component material having a printed graphic which is seen through either the body contacting surface or the garment contacting surface;

wherein the printed graphic of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles and wherein all of the printed graphics of the n absorbent articles have a predetermined association.

2. The absorbent product of Claim 1, wherein the predetermined association includes a predetermined order and the n absorbent articles are stacked in the package in accordance with the predetermined order.

4. The absorbent product of Claim 2, wherein the predetermined order is selected from the group consisting of an order illustrating story, an order for daily activity, an order for educational training, a sequential indication means, an order of usage instruction, an order illustrating child care tips, an order of sales promotion, and combinations thereof.

10. The method of Claim 1, wherein the component material is selected from the group consisting of a backsheet, a topsheet, an acquisition layer, an absorbent core, and a landing zone for waist-fastening means.

11. The absorbent product of Claim 1, wherein n is selected from 11 to 120.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.